

1 orders of the commission, the commission may commence an action
2 in the district court of the county where the utility has its
3 principal office or place of business for the appointment of a
4 receiver to assume possession of its property and to operate
5 its system upon terms and conditions in accordance with the
6 provisions of the Public Utility Act, commission rules and
7 orders of the court. Upon the order of the court, the receiver
8 may issue receiver's certificates to provide funds to operate,
9 repair, improve or enlarge the public utility. Unless
10 otherwise provided in the court order, payment of the
11 receiver's certificates is a first lien on the real and
12 personal property of the public utility. The court shall
13 prescribe the certificate's form, term and rate of interest.
14 Receiver's certificates are exempt from the operation of any
15 law that regulates the issuance or sale of securities of public
16 utilities."

17 Section 2. Section 62-3-3 NMSA 1978 (being Laws 1967,
18 Chapter 96, Section 3, as amended) is amended to read:

19 "62-3-3. DEFINITIONS. -- Unless otherwise specified, when
20 used in the Public Utility Act:

21 A. "affiliated interest" means a person who
22 directly or indirectly, through one or more intermediaries,
23 controls or is controlled by or is under common control with a
24 public utility. Control includes instances where a person is
25 an officer, director, partner, trustee or person of similar

1 status or function or owns directly or indirectly or has a
 2 beneficial interest in ten percent or more of any class of
 3 securities of a person and instances where the possession of
 4 the power to direct or cause the direction of the management
 5 and policies of a person exists in fact, notwithstanding the
 6 lack of ownership of ten percent or more of the person's voting
 7 securities;

8 B. "commission" means the public regulation
 9 commi ssi on;

10 C. "commissioner" means a member of the commission;

11 D. "municipality" means a municipal corporation
 12 organized under the laws of the state, and H-class counties;

13 E. "person" means an individual, firm, partnership,
 14 company, rural electric cooperative organized under Laws 1937,
 15 Chapter 100 or the Rural Electric Cooperative Act, corporation
 16 or lessee, trustee or receiver appointed by any court.

17 "Person" does not mean a class A county as described in Section
 18 4-36-10 NMSA 1978 or a class B county as described in Section
 19 4-36-8 NMSA 1978. "Person" does not mean a municipality as
 20 defined in this section unless the municipality has elected to
 21 come within the terms of the Public Utility Act as provided in
 22 Section 62-6-5 NMSA 1978. In the absence of voluntary election
 23 by a municipality to come within the provisions of the Public
 24 Utility Act, the municipality shall be expressly excluded from
 25 the operation of that act and from the operation of all its

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1 provisions, and no such municipality shall for any purpose be
2 considered a public utility;

3 F. "securities" means stock, stock certificates,
4 bonds, notes, debentures, mortgages or deeds of trust or
5 [~~other~~] similar evidences of indebtedness issued, executed or
6 assumed by a utility;

7 G. "public utility" or "utility" means every person
8 not engaged solely in interstate business and, except as stated
9 in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may own,
10 operate, lease or control:

11 (1) any plant, property or facility for the
12 generation, transmission or distribution, sale or furnishing to
13 or for the public of electricity for light, heat or power or
14 other uses;

15 (2) any plant, property or facility for the
16 manufacture, storage, distribution, sale or furnishing to or
17 for the public of natural or manufactured gas or mixed or
18 liquefied petroleum gas for light, heat or power or other uses;
19 but the term "public utility" or "utility" shall not include
20 any plant, property or facility used for or in connection with
21 the business of the manufacture, storage, distribution, sale or
22 furnishing of liquefied petroleum gas in enclosed containers or
23 tank truck for use by others than consumers who receive their
24 supply through any pipeline system operating under municipal
25 authority or franchise and distributing to the public;

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underscored material = new
[bracketed material] = delete

1 (3) any plant, property or facility for the
 2 supplying, storage, distribution or furnishing to or for the
 3 public of water for manufacturing, municipal, domestic or other
 4 uses; provided, however, that nothing contained in this
 5 paragraph shall be construed to apply to irrigation systems,
 6 the chief or principal business of which is to supply water for
 7 the purpose of irrigation;

8 (4) any plant, property or facility for the
 9 production, transmission, conveyance, delivery or furnishing to
 10 or for the public of steam for heat or power or other uses; or

11 (5) any plant, property or facility for the
 12 supplying and furnishing to or for the public of sanitary
 13 sewers for transmission and disposal of sewage produced by
 14 manufacturing, municipal, domestic or other uses; provided that
 15 the terms "public utility" or "utility" as used in the Public
 16 Utility Act do not include any utility owned or operated by a
 17 class A county as described in Section 4-36-10 NMSA 1978 either
 18 directly or through a corporation owned by or under contract
 19 with such a county;

20 H. "rate" means every rate, tariff, charge or other
 21 compensation for utility service rendered or to be rendered by
 22 a utility and every rule, regulation, practice, act,
 23 requirement or privilege in any way relating to such rate,
 24 tariff, charge or other compensation and any schedule or tariff
 25 or part of a schedule or tariff thereof;

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1 I. "renewable energy" means electrical energy
2 generated by means of a low- or zero-emission generation
3 technology that has substantial long-term production potential
4 and may include, without limitation, the following energy
5 sources: solar, wind, hydropower, geothermal, landfill gas,
6 anaerobically digested waste biomass or fuel cells that are not
7 fossil fueled. "Renewable energy" does not include fossil fuel
8 or nuclear energy;

9 J. "service" or "service regulation" means every
10 rule, regulation, practice, act or requirement relating to the
11 service or facility of a utility;

12 K. "Class I transaction" means the sale, lease or
13 provision of real property, water rights or other goods or
14 services by an affiliated interest to a public utility with
15 which it is affiliated or by a public utility to its affiliated
16 interest;

17 L. "Class II transaction" means:

18 (1) the formation after May 19, 1982 of a
19 corporate subsidiary by a public utility or a public utility
20 holding company by a public utility or its affiliated interest;

21 (2) the direct acquisition of the voting
22 securities or other direct ownership interests of a person by a
23 public utility if such acquisition would make the utility the
24 owner of ten percent or more of the voting securities or other
25 direct ownership interests of that person;

1 (3) the agreement by a public utility to
 2 purchase securities or other ownership interest of a person
 3 other than a nonprofit corporation, contribute additional
 4 equity to, acquire additional equity interest in or pay or
 5 guarantee any bonds, notes, debentures, deeds of trust or other
 6 evidence of indebtedness of any such person; provided, however,
 7 that a public utility may honor all agreements entered into by
 8 such utility prior to May 19, 1982; or

9 (4) the divestiture by a public utility of any
 10 affiliated interest that is a corporate subsidiary of the
 11 public utility;

12 M "corporate subsidiary" means any person ten
 13 percent or more of whose voting securities or other ownership
 14 interests are directly owned by a public utility; and

15 N. "public utility holding company" means an
 16 affiliated interest that controls a public utility through the
 17 direct or indirect ownership of voting securities of that
 18 public utility."

19 Section 3. Section 62-6-11 NMSA 1978 (being Laws 1941,
 20 Chapter 84, Section 23, as amended) is amended to read:

21 "62-6-11. SECURITIES ~~[VOID]~~ VOIDABLE UNLESS APPROVED. --
 22 All securities issued, assumed or guaranteed without
 23 application to and approval of the commission, except the
 24 securities mentioned in Sections 62-6-8 and 62-6-8.1 NMSA 1978,
 25 ~~[shall be void]~~ are voidable with the consent of the

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1 commi ssi on. "

2 Section 4. Section 62-8-7.1 NMSA 1978 (being Laws 1985,
3 Chapter 221, Section 3, as amended) is amended to read:

4 "62-8-7.1. HEARING PROCEDURES FOR CHANGE OF RATES OF
5 SMALL WATER AND SEWER UTILITIES. --

6 A. Whenever there is filed with the commission any
7 schedule proposing any new [~~rate or~~] rates pursuant to Section
8 62-8-7 NMSA 1978 by any public utility as defined in Paragraph
9 (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978 [~~whose~~
10 ~~annual operating revenues averaged less than five hundred~~
11 ~~thousand dollars (\$500,000) over any consecutive three-year~~
12 ~~period~~] with equal to or fewer than an aggregate of one
13 thousand five hundred service connections in any utility
14 operating district or division in New Mexico averaged over the
15 previous three consecutive years, the [~~rate or~~] rates shall
16 become effective as proposed by the utility without a hearing;
17 provided that the utility shall be required to give written
18 notice of the proposed rates to the ratepayers receiving
19 service from the utility at least sixty days prior to filing
20 the proposed rate change with the commission; and provided
21 further that the commission shall enter upon a hearing
22 concerning the reasonableness of any proposed rates filed by
23 such a utility pursuant to Subsections C and D of Section
24 62-8-7 NMSA 1978 when [~~any~~] a rate increase would have the
25 effect of increasing the [~~rate or~~] rates fifty percent or more

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1 in [~~any~~] a twelve-month period or upon the filing with the
2 commission of a protest seeking review of the proposed [~~rate~~
3 ~~or~~] rates signed by ten percent or more of the ratepayers or
4 twenty-five ratepayers, whichever is more, receiving service
5 from such a utility if the commission determines there is just
6 cause for reviewing the proposed rates. For purposes of this
7 section, a "service connection" means a metered hookup to the
8 utility's water system or a sewer tap to the utility's
9 wastewater system, and each person who receives a separate bill
10 equals one ratepayer and each person who receives multiple
11 bills equals one ratepayer. The petition shall be signed by
12 the person in whose name service is carried. The petition
13 shall be filed no later than twenty days after the filing with
14 the commission of the schedule proposing the new rates. In all
15 other respects, Section 62-8-7 NMSA 1978 shall apply to such
16 water utilities. If a utility provides both water and sewer
17 service, the [~~annual operating~~] service connection revenues
18 attributable to the provision of water service only shall
19 determine whether the procedures specified in this [~~section~~]
20 subsection shall apply to [~~any~~] a schedule proposing [~~any~~] new
21 [~~rate or~~] rates for water service, and the [~~annual operating~~
22 ~~revenues~~] service connection revenues attributable to the
23 provision of sewer service shall determine whether the
24 procedures specified in this [~~section~~] subsection shall apply
25 to [~~any~~] a schedule proposing [~~any~~] new [~~rate or~~] rates for

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1 sewer service. Nothing in this subsection shall prevent a
2 utility from filing for a rate change pursuant to any other
3 rule or procedure of the commission.

4 B. Whenever there is filed with the commission a
5 schedule proposing new rates pursuant to Section 62-8-7 NMSA
6 1978 by a public utility as defined in Paragraph (3) or (5) of
7 Subsection G of Section 62-3-3 NMSA 1978, with more than an
8 aggregate of one thousand five hundred service connections and
9 fewer than an aggregate of five thousand service connections in
10 any utility operating district or division in New Mexico
11 averaged over the previous three consecutive years, the rates
12 shall become effective as proposed by the public utility
13 without a hearing; provided that the public utility shall be
14 required to give written notice of the proposed rates to the
15 ratepayers receiving service from the public utility at least
16 sixty days prior to filing the proposed rate change with the
17 commission; and provided further that the commission shall
18 enter upon a hearing concerning the reasonableness of proposed
19 rates filed by such a public utility pursuant to Subsections C
20 and D of Section 62-8-7 NMSA 1978 when a rate increase would
21 have the effect of increasing rates more than eight percent in
22 a twelve-month period, or upon the commission staff's motion or
23 upon the filing with the commission of a protest seeking review
24 of the proposed rates signed by ten percent or more of the
25 ratepayers receiving service from the public utility, if the

1 commission determines there is just cause for reviewing the
2 proposed rates. The petition shall be signed by the person in
3 whose name service is carried. The petition shall be filed no
4 later than twenty days after the filing with the commission of
5 the schedule proposing the new rates. In all other respects,
6 Section 62-8-7 NMSA 1978 shall apply to such water utilities.
7 If a public utility provides both water and sewer service, the
8 service connection revenues attributable to the provision of
9 water service only shall determine whether the procedure
10 specified in this subsection shall apply to a schedule
11 proposing new rates for water service, and the service
12 connection revenues attributable to the provision of sewer
13 service shall determine whether the procedures specified in
14 this subsection shall apply to a schedule proposing new rates
15 for sewer service. Nothing in this subsection shall prevent a
16 public utility from filing for a rate change pursuant to any
17 other rule or procedure of the commission.

18 C. Notwithstanding the provisions of Subsections A
19 and B of this section, a public utility as defined in Paragraph
20 (3) or (5) of Subsection G of Section 62-3-3 NMSA 1978, with
21 fewer than an aggregate of five thousand service connections in
22 any utility operating district or division in New Mexico
23 averaged over the previous three consecutive years, that is
24 currently in good standing with all applicable requirements of
25 the commission, may adjust its charges for commodity and

1 service by up to two percent in any calendar year without a
2 hearing; provided that the public utility shall not have
3 changed its rates in the prior twelve-month period; and
4 provided further that the public utility shall be required to
5 give written notice of the proposed rate adjustments to the
6 ratepayers receiving service from the public utility prior to
7 its effective date. The increased rates shall not become
8 effective until at least thirty days after notice and filing
9 with the commission. If a public utility provides both water
10 and sewer service, the service connection revenues attributable
11 to the provision of water service only shall determine whether
12 the procedure specified in this subsection shall apply to any
13 schedule proposing any new rate or rates for water service, and
14 the service connection revenues attributable to the provision
15 of sewer service shall determine whether the procedures
16 specified in this subsection shall apply to any schedule
17 proposing any new rate or rates for sewer service. Nothing in
18 this subsection shall prevent a public utility from filing for
19 a rate change pursuant to any other rule or procedure of the
20 commi ssi on. "

21 Section 5. Section 62-8-8 NMSA 1978 (being Laws 1967,
22 Chapter 96, Section 6, as amended) is amended to read:

23 "62-8-8. INSPECTION AND SUPERVISION FEE. -- Each utility
24 doing business in this state and subject to the control and
25 jurisdiction of the commission with respect to its rates or

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1 service regulations shall pay annually to the state a fee for
 2 the inspection and supervision of such business in an amount
 3 equal to five hundred six thousandths percent of its gross
 4 receipts from business transacted in New Mexico for the
 5 preceding calendar year. That sum shall be payable on or
 6 before the [~~last day of February~~] first day of April in each
 7 year. An inspection and supervision fee shall be paid by
 8 utilities in addition to all property, franchise, license,
 9 intangible and other taxes, fees and charges provided by law.
 10 No similar inspection and supervision fee shall be measured by
 11 the amount of the gross receipts of such utility for the
 12 calendar year next preceding the date fixed in this section for
 13 the payment of the fee. In the case of utilities engaged in
 14 interstate business, the inspection and supervision fee shall
 15 be measured by the gross receipts of those utilities from
 16 intrastate business only for that preceding calendar year and
 17 not in any respect upon receipts derived wholly or in part from
 18 interstate business. No inspection and supervision fee shall
 19 be charged on the gross receipts from the sale of gas, water or
 20 electricity to a utility regulated by the commission for resale
 21 to the public."

22 Section 6. Section 62-9-3 NMSA 1978 (being Laws 1971,
 23 Chapter 248, Section 1, as amended) is amended to read:

24 "62-9-3. LOCATION CONTROL--LIMITATIONS.--

25 A. The legislature finds that it is in the public

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1 interest to consider any adverse effect upon the environment
2 and upon the quality of life of the people of the state that
3 may occur due to plants, facilities and transmission lines
4 needed to supply present and future electrical services. It is
5 recognized that such plants, [~~lines and~~] facilities and
6 transmission lines will be needed to meet growing demands for
7 electric services and cannot be built without in some way
8 affecting the physical environment where these plants,
9 facilities and transmission lines are located. The legislature
10 therefore declares that it is the purpose of this section to
11 provide for the supervision and control by the commission of
12 the location within this state of new plants, facilities and
13 transmission lines for the generation and transmission of
14 electricity for sale to the public.

15 B. [~~No~~] A person, including any municipality, shall
16 not begin the construction of any plant designed for or capable
17 of operation at a capacity of three hundred thousand kilowatts
18 or more for the generation of electricity for sale to the
19 public within or without this state, whether or not owned or
20 operated by a person that is a public utility subject to
21 regulation by the commission, or of transmission lines in
22 connection with such a plant, on a location within this state
23 unless the location has been approved by the commission. For
24 the purposes of this section, "transmission line" means any
25 electric transmission line and associated facilities designed

1 for or capable of operations at a nominal voltage of two
2 hundred thirty kilovolts or more, to be constructed in
3 connection with and to transmit electricity from a new plant
4 for which approval is required.

5 C. Application for approval shall contain all
6 information required by the commission to make its
7 determination, be made in writing setting forth the facts
8 involved and be filed with the commission. The commission
9 shall, after a public hearing and upon notice as the
10 commission may prescribe, act upon the application. The
11 commission may condition its approval upon a demonstration by
12 the applicant that it has received all necessary air and
13 water quality permits.

14 D. [~~No~~] Approval shall not be required for
15 construction in progress on the effective date of this
16 section or for additions to or modifications of an existing
17 plant or transmission line.

18 E. The commission shall approve the application
19 for the location of the generating plant unless the
20 commission finds that the operations of the facilities for
21 which approval is sought will not be in compliance with all
22 applicable air and water pollution control standards and
23 regulations existing or will unduly impair system
24 reliability. The commission shall not require compliance
25 with performance standards other than those established by

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1 the agency of this state having jurisdiction over a
2 particular pollution source.

3 F. The commission shall approve the application
4 for the location of the transmission lines unless the
5 commission finds that the location will unduly impair
6 important environmental values or the operation of the
7 proposed transmission lines will unduly impair power system
8 reliability.

9 G. [~~No~~] An application shall not be approved
10 pursuant to this section [~~which~~] if it violates an existing
11 state, county or municipal land use statutory or
12 administrative regulation unless the commission finds that
13 the regulation is unreasonably restrictive and compliance
14 with the regulation is not in the interest of the public
15 convenience and necessity, in which event and to the extent
16 found by the commission the regulation shall be inapplicable
17 and void as to the siting. When it becomes apparent to the
18 commission that an issue exists with respect to whether a
19 regulation is unreasonably restrictive and compliance with
20 the regulation is not in the interest of public convenience
21 and necessity, it shall promptly serve notice of that fact by
22 certified mail upon the agency, board or commission having
23 jurisdiction for land use of the area affected and shall make
24 the agency, board or commission a party to the proceedings
25 upon its request and shall give it an opportunity to respond

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1 to the issue. The judgment of the commission shall be
 2 conclusive on all questions of siting, land use, aesthetics
 3 and any other state or local requirements affecting the
 4 siting.

5 H. Nothing in this section shall be deemed to
 6 confer upon the commission power or jurisdiction to regulate
 7 or supervise any person, including a municipality, that is
 8 not otherwise a public utility regulated and supervised by
 9 the commission, with respect to its rates and service and
 10 with respect to its securities, nor shall any other provision
 11 of the Public Utility Act be applicable with respect to such
 12 a person, including a municipality.

13 I. The commission shall issue its order granting
 14 or denying the application within six months from the date
 15 the application is filed with the commission. Failure to
 16 issue its order within six months is deemed to be approval of
 17 the application; provided, however, that the commission may
 18 extend the time for granting approval for a transmission line
 19 that is subject to this section for an additional ten months
 20 upon finding that the additional time is necessary to
 21 determine if the proposed location of the line will unduly
 22 impair important environmental values. "

23 Section 7. Section 63-7-20 NMSA 1978 (being Laws 1951,
 24 Chapter 194, Section 1, as amended) is amended to read:

25 "63-7-20. UTILITY AND CARRIER INSPECTION-- FEE. --

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1 A. Each utility and carrier doing business in
2 this state which is subject to the control and jurisdiction
3 of the commission by virtue of the provisions of Article 11
4 of the constitution of New Mexico with respect to its rates
5 and service shall pay annually to the commission a fee in
6 performance of its duties as now provided by law. The fee
7 for carriers shall not exceed two hundred fifty-six
8 thousandths percent of its gross receipts from business
9 transacted in New Mexico for the preceding calendar year.
10 The fee for utilities shall not exceed five hundred eleven
11 thousandths percent of its gross receipts from business
12 transacted in New Mexico for the preceding calendar year.
13 This sum shall be payable annually on or before [~~January 20~~
14 ~~or in equal quarterly installments on or before January 20,~~
15 ~~April 20, July 20 and October 20~~] April 1 in each year. No
16 similar fee shall be imposed upon the utility or carrier. In
17 the case of utilities or carriers engaged in interstate
18 business, the fees shall be measured by the gross receipts of
19 the utilities or carriers from intrastate business only for
20 the preceding calendar year and not in any respect upon
21 receipts derived wholly or in part from interstate business.
22 As used in this section, "utility" includes telephone
23 companies and transmission companies but does not include
24 public utilities subject to the Public Utility Act.

25 B. When a fee is not paid on the date it is due,

1 interest shall be paid to the state on the amount due. The
 2 interest on the amount due shall start to accrue on the day
 3 following the due date and shall continue to accrue until the
 4 total amount due is paid. The rate of interest on a late fee
 5 payment shall be fifteen percent per year, computed at the
 6 rate of one and one-fourth percent per month.

7 C. In addition to any interest due on a late fee
 8 payment, a penalty shall be paid to the state for failure to
 9 pay the fee when it is due. The penalty imposed shall be two
 10 percent of the amount of the fee due.

11 D. The attorney general, in the name of the
 12 state, shall bring suit to collect fees, interest and
 13 penalties that remain unpaid."

14 Section 8. EFFECTIVE DATE. --The effective date of the
 15 provisions of this act is July 1, 2005.

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